

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Henri A. Burque, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines, that Telegrapher R. H. Vermilion, Sacramento Division, be compensated under Rule 10 of the Telegraphers' Agreement and that certain Memorandum of Understanding dated San Francisco, Calif., January 3, 1938, for services performed at Hackamore, Sacramento Division, February 28 to March 6, inclusive, 1940.

EMPLOYES' STATEMENT OF FACTS: Instructions issued to Claimant, Telegrapher Vermilion, on February 28th, 1940—

"Sacto. Feb. 28, 1940

R. H. Vermilion—Sacto.

Get on No. 88 Feb. 28th, go to Alturas and on arrival Alturas report to Chief Dispatcher Custer at Dunsmuir for instructions. Get off at Reno, call at ticket office who will arrange for bus transportation Reno to Alturas. 0-258.

E. F. Nassoiy 3 P. M."

Upon reporting to Chief Dispatcher as instructed in the above quoted instructions, Claimant was ordered to Hackamore for service, Hackamore being a closed office prior to the emergency conditions which caused it to be opened for the period of time covered by this claim.

The office at Hackamore was closed as reflected by the next quoted telegrams issued by the Chief Dispatcher, T. F. Custer at Dunsmuir:

"Dunsmuir, March 5, 1940

Oprs.

Hackamore

Effective with close of shift Hackamore 4 P. M. midnight tonight and 8 A. M. tomorrow March 6th three opr. positions Hackamore abolished. Oprs. released report to W. L. Hack Sacramento for instructions. D-473.

T. F. C.
7:25 P. M."

"Dunsmuir, Mar. 5th, 1940

WLH

Sacramento

Effective with close of shift Hackamore 4:00 P. M. midnight tonight & 8 A. M. tomorrow Mar. 6th three opr's Pos'ns Hackamore abolished. Oprs. released report to W. L. Hack Sacramento for Instun's.

The Board's attention is directed to Awards 1493, 1494, 1520, and 1522. The carrier submits that the principles and interpretations established by Awards 1493, 1494, 1520 and 1522 are proper and based on the clear and unambiguous language of the rule and by applying those principles and interpretations to the instant case the conclusion is inescapable that to sustain the interpretation requested by the petitioner in the instant case would violate the specific language of Rule 10.

CONCLUSION

The carrier having completely established that it properly compensated the claimant for service performed at Hackamore during the period March 1 to 6, 1940, respectfully asserts that it is incumbent upon the Board to deny the alleged claim in the instant case.

OPINION OF BOARD: This is a case of service performed in a telegraph office which had been closed for sometime prior to the dates when services were performed therein, and in that respect differs from TE-2281. What we have said in TE-2281, however, applies with greater force to the instant case.

The facts are that due to washouts (caused by torrential rains) between Gerber and Dunsmuir, the Carrier's line between said points was inoperative from February 27th to March 5th, 1940, during which time traffic normally handled between Sacramento and Klamath Falls, via Gerber and Dunsmuir, was routed via the Ogden route and Modoc Line through Fernley and Alturas. In order to handle the increased volume of traffic on the Modoc Line during the time the line between Gerber and Dunsmuir was out of service, it was necessary to establish temporarily a continuously operated telegraph office at Hackamore and assign three telegraphers thereto, one of whom was the Claimant. He was released when the Gerber-Dunsmuir Line was reopened.

In addition to the awards referred to in TE-2281, we have the following awards, based on similar facts as are found in this docket: Award 84, Referee Samuel—

"While it is true that the Farthing Station was not actually within the boundaries of the washout territory, yet it was for all practical and reasonable purposes at the washout. The construction or interpretation placed on the language of Rule 19 by the Carrier is too strict."

(The station is on the Colorado & Southern Railway Co., 3½ miles from the washout, and Rule 19 that prevailed there is similar to Rule 10 of the Southern Pacific Lines with which we are concerned.)

The award was rendered September 13, 1935, and three days later the Division, without a referee, sustained the second claim for the same service performed at the same place and at the same time as the service involved in Award 84, thereby adhering to the above award.

Award 270, Referee Hotchkiss, in a similar case as Awards 84 and 89, similar set of facts and similar rule involving employees on the Illinois Central Railroad, said:

"The referee finds that the emergency service which the employees in this case were called upon to perform was necessary to the efficient operation of the railroad and to the discharge of obligations which it had assumed under its agreement with other lines."

Award 395, Referee Sharfman (a case of a closed telegraph office reopened temporarily): The pertinent portion of the Opinion appears in TE-2281. We repeat the quotation,

"There is no denial that the office at Flanigan was an emergency office, nor that slides which are obviously similar to derailments and washouts were the effective cause of the derailment. * * * No require-

ments as to the locus of the slides or as to interruption of traffic are stipulated in the rule as conditions of its applicability. The essential element which provides opportunity for the service and compensation at issue, is the emergency office. * * * Nor is there any merit to the contention that the office must be located at the exact point of the derailment, washout or similar difficulty. * * * Practical demands of the situation must govern with respect to the place chosen for emergency operation; and since the office here involved was located at the nearest junction point at which the Western Pacific trains might be detoured and emergency telegraph service was required, the causal connection between the slides and emergency office was not broken in any way."

In argument for the Carrier it is pointed out that the opinion states there was no denial that the office was an emergency office. The record discloses, however, that the Carrier did deny in its submission that the office was an emergency office due to flood conditions and took the position the service was to handle increased traffic indirectly due to the washout, which had occurred on another line, some distance of 91 to 111.9 miles away from the location of the office. The Carrier also contended that the office had to be at the scene of the trouble. The statement of "no denial" in the Opinion is the statement of a finding by the Referee and not of a conceded fact by the Carrier. The claim was sustained. This is a Southern Pacific case, as are all others that follow this award, and Rule 10 is involved in all of them.

Though the claim was denied in Award 923, Referee Swacker, on the grounds stated in TE-2281, we find in the Opinion the following:

"We cannot, however, agree with Carrier's contention that an emergency office to be such must be located at or immediately adjacent to the blockade. It may be far removed, but it is an office operated anywhere, temporarily, for the purpose of caring for resulting conditions, which otherwise would not have been opened."

Award 1323, Referee Rudolph, is a case of a temporary office being opened and we have cited and quoted from the Opinion in TE-2281. We will not repeat but simply make reference to it and embody the quotation in that docket as part of this Opinion.

The Opinion in Docket TE-2281, and this Opinion, embody all of the principles upon which our conclusion is based, and govern the records in the following Dockets: TE-2284, TE-2285, TE-2286, TE-2287, TE-2288, TE-2332, TE-2334, TE-2335 and TE-2336. We have examined all of the facts in them, and where there is any substantial difference in the situation, we have noted it. None, however, are found to be sufficiently distinguishing as to warrant a different result. Excerpts cited in our Opinions in these two key cases, TE-2281 and this one, effectively answer and refute all of the arguments and contentions advanced by and on behalf of the Carrier.

We might add, for further clarity, bearing in mind other dockets submitted herewith, that distance from the office to the territory where the trouble occurred, the number of men regularly employed at regular open stations and the difference in rates of pay as between regular and extra men at stations, do not affect the result. This is made clear in the excerpts from Opinions quoted in this Award and in Docket TE-2281.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Claimant should be compensated under Rule 10.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1943.

Dissent to

Award 2403—Docket TE-2281	Award 2408—Docket TE-2287
Award 2404—Docket TE-2282	Award 2409—Docket TE-2288
Award 2405—Docket TE-2284	Award 2410—Docket TE-2333
Award 2406—Docket TE-2285	Award 2411—Docket TE-2334
Award 2407—Docket TE-2286	Award 2412—Docket TE-2335
Award 2413—Docket TE-2336	

These Awards err in their adoption of extreme implications from certain prior awards which have followed a theory of causal connection in interpretation and application of Rule 10, Emergency Service.

This rule by its express and unambiguous terms, considered in the light of realism and practical knowledge, is confined to telegraph service at the scene of derailments, washouts, or similar emergency offices opened temporarily to deal with those emergent conditions. The rule does not comprehend telegraph service which the Carrier elects to continue or add otherwise to counteract results or conditions which, because of remote relation, may thus be said to have a so-called causal connection with the emergency.

Reference is made to our dissents in the prior awards which are considered in the Opinion of confronting Award 2403, Docket TE-2281.

R. F. Ray
A. H. Jones
C. P. Dugan
R. H. Allison
C. C. Cook